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8	UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON	
9	SEATTLE DIVISION	
10		No
11	SUNRISE DENTAL SOLUTIONS, LLC, a Washington limited liability company, and	COMPLAINT FOR TRADEMARK
12	KHURANA & GHORBANIAN V, PLLC, d/b/a SUNRISE DENTAL, a Washington professional	INFRINGEMENT AND UNFAIR COMPETITION
13	limited liability company,	Jury Trial Demanded
14	Plaintiffs,	
15	V.	
16	SUNRISE DENTAL LLC, f/k/a SUNRISE DENTAL PLLC, a Washington limited liability	
17	company; PAUL H. BARTON, DDS, PLLC, a	
18	Washington professional limited liability company; and PAUL H. BARTON, DDS, an	
19	individual,  Defendants.	
20	Defendants.	
21	Plaintiffs, for their complaint against defendants, state and allege as follows:	
22	PARTIES, JURISDICTION AND VENUE	
23	1. Plaintiff Sunrise Dental Solutions, LLC is a Washington limited liabilit	
24	company having its principal place of business in King County, Washington.	
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- 2. Plaintiff Khurana & Ghorbanian V, PLLC, d/b/a Sunrise Dental (hereafter "Sunrise Dental of Pasco") is a Washington professional limited liability company having its principal place of business in Pasco, Benton County, Washington.
- 3. Defendant Sunrise Dental LLC is a Washington limited liability company, formerly known as "Sunrise Dental, PLLC." Plaintiffs are informed and believe, and thereon allege, that Sunrise Dental LLC has its principal place of business in Benton County, Washington.
- 4. Defendant Paul H. Barton, DDS, PLLC, is a Washington professional limited liability company which was formed September 28, 2010. Plaintiffs are informed and believe, and thereon allege, that Defendant Paul H. Barton, DDS, PLLC has, since September 28, 2010, engaged in the practice of dentistry in Benton County, Washington.
- 5. Defendant Paul H. Barton, DDS ("Barton") is an individual residing within Benton County, Washington. Barton is the sole member of both Sunrise Dental LLC and Paul H. Barton, DDS, PLLC.
- 6. This action arises, *inter alia*, under the trademark laws of the United States, 15 U.S.C. § 1051, *et seq.*, and under the common law. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, 1367, and 2201.
  - 7. Each Defendant is subject to personal jurisdiction within this district.
  - 8. This district is a proper venue for this action, pursuant to 28 U.S.C. § 1391.

# PLAINTIFFS' TRADEMARK RIGHTS

9. Plaintiff Sunrise Dental Solutions LLC ("SDSL") is in the business of owning intellectual property and authorizing rights under intellectual property for the benefit of authorized users. SDSL owns (i) United States Trademark Registration No. 3,886,179 for the mark SUNRISE DENTAL for dentistry services, and (ii) United States Trademark Registration No. 3,727,891, for the design mark SUNRISE DENTAL for dentist services (hereafter the SUNRISE DENTAL Marks).

10. Plaintiff Sunrise Dental of Pasco is authorized to use the SUNRISE DENTAL Marks on a non-exclusive basis in connection with its provision of dentistry services from its office in Pasco, Benton County, Washington.

11. Pursuant to 15 U.S.C. § 1057, the certificates of registration of Plaintiff SDSL's SUNRISE DENTAL Marks constitute *prima facie* evidence of the validity of the registered marks and registration thereof, of SDSL's ownership of the marks, and SDSL's exclusive right to use and authorize use of the registered marks in commerce on or in connection with dentistry and dentist services.

## **DEFENDANTS' ACTIVITIES**

- 12. Plaintiffs are informed and believe, and thereon allege, that Defendant Barton formed a limited liability company under the name of "Sunrise Dental, L.L.C." on or about December 22, 2003. At an unknown point thereafter, Sunrise Dental, L.L.C. began providing dentistry services in the city of Richland, Benton County, Washington. Thereafter, Sunrise Dental, L.L.C. changed its corporate status to a professional limited liability company, under the name "Sunrise Dental, PLLC".
- 13. Continuously from the date of that change of corporate status to a professional limited liability company, until about October 1, 2010, Sunrise Dental PLLC rendered dental services to patients within the meaning of R.C.W. 25.15.045(4).
- 14. Continuously from the date of that change of corporate status to a professional limited liability company through about October 1, 2010, Sunrise Dental PLLC provided dental services under an unlawful corporate name, within the meaning of R.C.W. 25.15.045(4). At all times during the provision of dental services under this unlawful corporate name, Defendant Barton was the sole member of Sunrise Dental, PLLC.
- 15. On or about February 19, 2010, Sunrise Dental PLLC, acting through its sole member, Barton, filed a civil action in the Superior Court of King County, Washington under Civil Action No. 10-2-07700-6, naming as the sole Defendant Sunrise Dental Solutions LLC (the same entity referred to herein as SDSL). In this King County action, Sunrise Dental

PLLC alleged common law trademark infringement, unfair competition, and violation of Washington's Consumer Protection Act.

- 16. During the course of the still-pending King County action, SDSL notified the Washington Secretary of State that Sunrise Dental PLLC was providing dental services under an unlawful corporate name, in violation of R.C.W. 25.15.045(4). In response, the Washington Secretary of State required Sunrise Dental PLLC and its member, Barton, to discontinue use of the unlawful corporate name in association with dental practice.
- 17. In response to the requirement of the Washington Secretary of State, Barton incorporated a new professional limited liability company, Defendant Paul H. Barton, DDS, PLLC, on or about September 28, 2010. Additionally, on or about October 1, 2010, Barton changed the corporate status of Sunrise Dental PLLC from a professional limited liability company to a limited liability company, under the name of the present defendant, Sunrise Dental LLC.
- 18. Plaintiffs are informed and believe, and thereon allege, that Defendant Sunrise Dental LLC does not provide dental services and has not done so since the change in its status from a professional limited liability company to a limited liability company, on or about October 1, 2010.
- 19. Accordingly, Plaintiffs are informed and believe, and thereon allege, that Defendant Sunrise Dental LLC does not and cannot claim any common law trademark rights for the provision of dental services.
- 20. Furthermore, at all times that Sunrise Dental PLLC was providing dental services, it was doing so under an unlawful corporate name, and therefore did not accrue any trademark rights protectable under the common law by virtue of its unlawful conduct.
- 21. Barton, in his individual capacity, has not accrued any protectable trademark rights under the common law, because of the unlawful conduct of Sunrise Dental PLLC, and by virtue of the fact that Barton, in his individual capacity, is not an entity that provided dental services to the consuming public.

- 22. To the extent that Defendant Paul H. Barton, DDS, PLLC asserts any claim to common law trademark rights, Plaintiffs have not been informed of any such claim; moreover, no common law rights could inure to the benefit of that entity before the date of its formation, September 28, 2010.
- 23. Plaintiffs are informed and believe, and thereon allege, that at no time have any of the Defendants registered a trade name with the Washington State Department of Licensing.
- 24. Plaintiffs are informed and believe, and thereon allege, that since approximately the date of its formation on September 28, 2010, Defendant Paul H. Barton, DDS, PLLC has provided dental services from an office from within the city of Richland, Benton County, Washington, under the trade name "Sunrise Dental;" however, Paul H. Barton, DDS, PLLC has not registered the trade name with the state of Washington.

#### **COUNT 1**

(Infringement of Federally Registered Trademark)

- 25. Plaintiffs repeat and reallege each allegation contained in paragraphs 1–24, inclusive, with the same force and effect as if fully set forth herein.
- 26. This cause of action arises under Section 32 of the Lanham Act, 15 U.S.C. § 1114, for infringement of federally registered trademarks.
- 27. Defendants' unauthorized and unlawful use of the unregistered trade name "Sunrise Dental" in commerce within Richland, Washington, in association with the provision of dental services, is likely to cause confusion, mistake, and/or deception as to the origin of dental services provided by Defendants, and the services provided by Plaintiff Sunrise Dental of Pasco, and to mislead consumers into believing that Defendants' services originate with, or are affiliated with, sponsored, authorized, approved, or sanctioned by Plaintiff SDSL.
- 28. These acts of Defendants constitute infringement of Plaintiffs' rights in the registered SUNRISE DENTAL Marks in violation of Section 32 of the Lanham Act.

- 29. These acts of infringement have caused or will cause Plaintiffs to sustain monetary damage, loss, and injuries to an extent not yet ascertained.
- 30. Defendants' acts of infringement, unless enjoined by this Court, will continue to cause Plaintiffs to sustain irreparable damages, losses, and injuries for which Plaintiffs have no adequate remedy at law.

#### **COUNT 2**

(Unfair Competition)

- 31. Plaintiffs repeat and reallege every allegation contained in paragraphs 1–30, inclusive, with the same force and effect as if fully set forth herein.
- 32. The actions of Defendants as set forth herein constitute unfair methods of competition, and unfair or deceptive acts or practices in the conduct of trade or business, in violation of R.C.W. 19.86.020 et. seq.
- 33. Defendants' actions will mislead a substantial portion of the public as to the source of Defendants' services, and these unfair and deceptive acts and practices have caused and will continue to cause injuries to Plaintiffs in the conduct of business within the state of Washington. Further, Defendants' actions have resulted in injuries to Plaintiffs, for which Plaintiffs have no adequate remedy at law.

#### **COUNT 3**

(Declaration of Absence of Common Law Rights)

- 34. Plaintiffs repeat and reallege each allegation contained in paragraphs 1–33, inclusive, with the same force and effect as if fully set forth herein.
- 35. This cause of action arises under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201(a).
- 36. An actual controversy exists between Plaintiffs and Defendants as to whether Defendants' claimed use of the trade name "Sunrise Dental" provides Defendants, or any of them, with any valid, enforceable or protectable common law trademark rights superior to Plaintiffs' rights in the SUNRISE DENTAL Marks.

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37. Plaintiffs are entitled to the Court's declaration that no Defendant can assert any valid, enforceable, or protectable common law trademark rights in the trade name "Sunrise Dental," in connection with the provision of dental services, and that no Defendant can assert superior common law rights in said trade name as a defense to infringement of Plaintiffs' federally registered SUNRISE DENTAL Marks.

### PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully pray for the following relief:

- A. For judgment that the Plaintiffs' SUNRISE DENTAL Marks are valid, enforceable, and infringed by each Defendant that has used the trade name "Sunrise Dental" in connection with dental services;
- B. For the Court's Declaratory Judgment that neither Defendant Sunrise Dental LLC, Defendant Paul H. Barton, DDS, PLLC, nor Defendant Barton in his individual capacity can assert any valid, enforceable, or protectable common law rights in the trade name "Sunrise Dental" because of their unlawful conduct in violation of R.C.W. 25.15.045(4);
- C. For judgment that all Defendants are liable to Plaintiffs for infringement of federally registered trademarks in violation of 15 U.S.C. § 1114 and for unfair or deceptive acts and practices in the conduct of trade or business in violation of R.C.W. 19.86.020, et. seq.;
- D. For judgment that Defendants have engaged in these acts of infringement and unfair competition knowingly, willfully, and in bad faith;
- E. For judgment that Defendants, their members, and all persons acting in concert or participation with them be preliminarily and permanently enjoined from directly or indirectly advertising, promoting, offering, or providing dental services under the trade name "Sunrise Dental" or any similar designation or colorable imitation thereof, and from further engaging in any acts of unfair competition; and

For judgment that Plaintiffs be awarded damages in an amount to proven at 1 F. trial together with their costs, expert witness fees, attorneys' fees, and such other and further 2 3 relief as the Court may deem just and proper. 4 DEMAND FOR JURY TRIAL 5 Pursuant to F.R.C.P. 38, Plaintiffs demand trial by jury on all issues so triable. 6 7 Dated this 29th day of December, 2010. 8 CHRISTENSEN O'CONNOR 9 JOHNSON KINDNESSPLLC 10 11 12 s/ Robert J. Carlson Robert J. Carlson, WSBA No.: 18,455 13 Everett E. Fruehling, WSBA No.: 20975 Christensen O'Connor Johnson KindnessPLLC 14 1420 Fifth Avenue, Suite 2800 15 Seattle, WA 98101-2347 Telephone: 206.682.8100 16 Fax: 206.224.0779 E-mail: carlson@cojk.com, 17 everett.fruehling@cojk.com, 18 courtdocs@cojk.com 19 Attorney for Plaintiffs 20 21 22 23 24 25 26 27